

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 THE HON. JUDGE VIRGINIA A. PHILLIPS, JUDGE PRESIDING
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6 UNITED STATES OF AMERICA,)
7)
8 Plaintiff,)
9)
10 vs.) NO. EDCR-17-00091-VAP
11)
12 FAZLIDDIN KURBANOV,)
13)
14 Defendant.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Sentencing Hearing

Los Angeles, California

Monday, August 13, 2018

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U.S. District Courthouse
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Russian-speaking Interpreter: Vladimir Ferkelman

1 Los Angeles, California; Monday, August 13, 2018;

2 9:17 a.m.

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4 THE CLERK: Calling Item Number 3 on the Court's
5 calendar, ED CR 17-00091-VAP, United States of America
6 versus Fazliddin Kurbanov.

7 Counsel, please come forward and state your
8 appearances for the record.

9 MS. YANG: Good morning, Your Honor. Elizabeth
10 Yang on behalf of the United States. And joining me at
11 counsel table is Special Agent Ryan Crowley of the Federal
12 Bureau of Investigation.

13 THE COURT: Thank you.

14 MS. POTASHNER: Good morning, Your Honor. Hilary
15 Potashner on behalf of Fazliddin Kurbanov who is present
16 before the Court with a Russian-speaking interpreter.

17 THE COURT: Thank you.

18 Has the Government complied with the Crime Victims
19 Rights Act as to this proceeding?

20 MS. YANG: Yes, Your Honor. And victim Warden
21 Johnson is in attendance and would, at the appropriate time,
22 be prepared to make a statement to the Court.

23 THE COURT: All right. Thank you.

24 This matter is on the Court's calendar for
25 sentencing.

1 Are both sides ready to proceed?

2 MS. YANG: Yes, Your Honor.

3 MS. POTASHNER: Yes, Your Honor.

4 THE COURT: Mr. Kurbanov, you're being assisted
5 this morning by a Russian-language interpreter.

6 Are you able to understand the interpreter when he
7 is speaking to you in Russian?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: All right. The presentence report was
10 disclosed on April 30th and the addendum on August the 8th.

11 Have you reviewed those with your client?

12 MS. POTASHNER: They have been reviewed with
13 Mr. Kurbanov.

14 THE COURT: Was it your co-counsel who did that?

15 MS. POTASHNER: It was, Your Honor. Thank you.

16 THE COURT: Were they translated into Russian for
17 him?

18 MS. POTASHNER: There was a Russian interpreter
19 present and Mr. Kurbanov does speak and read some English
20 and so he used the interpreter as needed.

21 THE COURT: Mr. Kurbanov, have you reviewed with
22 your attorney, I think it was Ms. Gonzalez, the probation
23 office's reports in your case?

24 THE DEFENDANT: Yes. Yes, Your Honor.

25 THE COURT: All right. In addition to the

1 presentence report, I have considered the filings from both
2 sides. The -- I have the dates in front of me -- the
3 Government's memorandum and the memorandum from the -- the
4 sentencing memorandum from the defense, which there was a
5 request to file under seal, and the attachments to that.

6 Is this everything both sides have filed?

7 MS. POTASHNER: Yes, Your Honor.

8 MS. YANG: Yes, Your Honor.

9 THE COURT: Does either side have any objections
10 to the presentence report? The Government originally had
11 some objections. Those were corrected. Otherwise, there
12 were no objections to the calculations in the presentence
13 report; is that correct?

14 MS. POTASHNER: That is correct, Your Honor.

15 THE COURT: All right. I would adopt the factual
16 findings and the guideline calculations in the presentence
17 report.

18 Here, the advisory guideline range, which the
19 Court considers, along with all of the other factors set
20 forth at 3553(a), would be a sentence of 360 months or
21 30 years to life. However, for the one count, Count 1, to
22 which the defendant pled guilty, the statutory maximum
23 sentence is 20 years or 240 months; a period of supervised
24 release from one year to life; and a fine ranging from
25 \$50,000 to \$250,000.

1 The offense level is calculated at 40. The base
2 offense level is 33 under Guideline Section 2a2.1, plus four
3 levels under 2a2.1b1a because the victim sustained
4 permanently bodily injury; plus six levels under 3a1.2c2
5 because this was an attack on a prison official while the
6 defendant was in his custody. So that results in a level of
7 43, minus three levels for acceptance of responsibility.

8 The defendant's criminal history category is III.

9 In 2016 he was convicted of conspiracy to provide
10 material support to a foreign terrorist organization, three
11 points, and then an additional two points because he was
12 under sentence at the time of the offense here. So five
13 criminal history points.

14 The defendant's sentencing request is a sentence
15 of 20 years, with 15 of those to run consecutively to the
16 300-month sentence he's serving for the conviction in Idaho.

17 The Government's sentencing request is a sentence
18 of 20 years to run consecutively to that sentence.

19 Turning to the 3553(a) factors, starting with the
20 nature and circumstances of the offense.

21 While the defendant was incarcerated at the FCI
22 Victorville, he armed himself with a shank. And in the mess
23 hall, he grabbed the victim, the Warden C.J. from behind and
24 attempted to slit his throat and succeeded in slashing the
25 left side of the victim from his armpit to his hip bone,

1 required 80 -- not stitches but staples, a permanent scar,
2 and permanent nerve damage. Two officers were injured in
3 trying to restrain the defendant.

4 And according to the defendant's admissions, he
5 specifically targeted this victim as he viewed him -- the
6 defendant viewed him as the chief or the person in charge.

7 The history and characteristics of the defendant.
8 He's 30 years old. He was born in Tashkent, Uzbekistan. He
9 has three siblings. His parents now live in Idaho and they
10 have changed their names after his conviction. He hasn't
11 been in contact with his family for some time. His
12 childhood was marked by the fall of the U.S.S.R. and the
13 subsequent lawlessness in Uzbekistan. His parents had
14 become evangelical Christians and were targeted -- the
15 family was targeted because of that.

16 He was injured when he was a bystander to a bomb
17 that exploded when he was 17 years old. He was drafted into
18 the Uzbekistan army, where he contracted Hepatitis A and was
19 physically mistreated and beaten. He fled Uzbekistan in
20 2008. He was married in 2006, but divorced in 2017 after
21 the charges were brought against him in Idaho. He has one
22 child, age nine, who lives with his former wife.

23 The defendant entered the United States in 2009 as
24 a refugee. He's been in federal custody since 2013. I
25 believe it was in connection with this offense that he

1 suffered an injury to his left foot, a fractured skull and a
2 concussion, and he suffers back pain.

3 He was diagnosed with schizophrenia in 2005. He
4 has at least two suicide attempts. He has a seventh grade
5 education in Uzbekistan and a commercial truck driving
6 license and work history in that field.

7 The need for the sentence to reflect the
8 seriousness of the offense, promote respect for the law and
9 provide just punishment.

10 This was a life -- well, actually to call it
11 life-changing is probably an understatement for the victim
12 in this case, who will, in addition to his physical
13 injuries, continue to suffer in his ability to do -- perform
14 his job. I believe he was off of work for about a month
15 immediately after, and the defendant not only -- this wasn't
16 a spur of the moment attack. It was planned. And as I
17 said, this victim was specifically targeted not for anything
18 in particular that he had done to the defendant but because
19 the defendant viewed him as the head of the prison staff.

20 The need for the sentence to afford adequate
21 deterrence to criminal conduct. The defendant was already
22 in custody at the time that he committed this very serious
23 offense. So even though he was serving a sentence of
24 300 months, or 25 years, obviously that wasn't enough to
25 deter him from future criminal conduct.

1 There is, according to reports from the MDC, he
2 continues to say that he's targeting those who are working
3 at the MDC, particularly if they are veterans with history
4 of service in Afghanistan.

5 The need for the sentence to reflect the need to
6 protect the public from further crimes of the defendant.

7 Again, given the seriousness of both of the
8 offenses which he stands convicted but particularly this
9 most recent offense, that's an important factor.

10 The need to provide the defendant with
11 educational/vocational training, medical care, et cetera.
12 It's clear that he needs -- the diagnosis of schizophrenia,
13 which I think contributed to this offense. He obviously
14 needs psychiatric treatment.

15 So part of the Court's decision will be a
16 directive to the B.O.P. that he receive psychiatric
17 treatment to address the schizophrenia, which is a very
18 serious disorder.

19 The need to avoid sentencing disparity. As I
20 noted, the guideline sentence would be 30 years to life, but
21 there's a 20-year statutory maximum for Count 1. I would
22 sentence the defendant to 20 years, to run consecutively
23 from the sentence imposed in the Idaho conviction.

24 And I think now would be the time for the victim
25 to address the Court.

1 MS. YANG: Yes, Your Honor.

2 THE COURT: So the defendant may be seated, and
3 then I'll hear argument from the defense, as well as the
4 Government.

5 MS. POTASHNER: Yes, thank you, Your Honor.

6 THE COURT: Thank you.

7 Could you state your name for the record, sir?

8 VICTIM JOHNSON: Calvin Johnson.

9 THE COURT: Thank you, Mr. Johnson.

10 VICTIM JOHNSON: Well, first of all, it's
11 interesting. I haven't read anything about this case since
12 this happened to me about two years ago, so hearing you read
13 the actual events, you know, pretty much, you know, just
14 brought light to how I'm lucky to be here standing in front
15 of you actually to testify, to tell my story. It's very
16 rare that a victim -- actually it's hard to call myself a
17 victim. I had to come to terms with calling myself a
18 victim. So I am a victim.

19 But when that attack happened two years ago, you
20 know the only thing that I remember from that date was when
21 I was in the helicopter being air-lifted to the hospital.
22 And after all the trauma doctors did what they did to
23 actually save my life, to keep me from bleeding to death, I
24 can remember going home and then my brother calling me and
25 telling me that my mom's in the hospital. So that attack on

1 me actually impacted my whole family.

2 THE COURT: I should have mentioned this, but your
3 mother went into the hospital after she learned what
4 happened to you; correct? I mean, your mother's
5 hospitalization was caused by her distress of what happened
6 to you?

7 VICTIM JOHNSON: Oh, yes, yes, Your Honor. Well,
8 she had a slight heart attack after that.

9 THE COURT: All right.

10 VICTIM JOHNSON: So I just remember getting that
11 news. You know, I didn't know if my mom was going to live
12 or die. So, you know, I really didn't know what was wrong
13 with her. I just remember that event.

14 And also I remember the fear in my daughter's eye.
15 And my daughter lost her mother in 2009 from cancer, so the
16 thought on her face -- and just the look in her eyes to
17 think that, you know, she almost lost another parent. She
18 was almost without any parents. And just my daughters and
19 my son -- I just remember the impact of that attack. It
20 affected so many lives.

21 I just remember being -- going back to the
22 institution because they took me from the dining facility to
23 actually institution hospital, and I just remember the fear
24 in the staff eyes. I can just remember vivid things. The
25 fear in the staff's faces, that, you know, a warden,

1 their -- their leader, their boss, laying on a table, pretty
2 much -- they didn't know whether I was going to die or live.

3 So you're right, I was gone for about 30 days.

4 But there's something that I had to do. Before I left and
5 went to Louisiana -- I actually got transferred to Louisiana
6 to another facility. So I actually went back to the
7 institution to stand in the dining facility, not just for
8 me. I had to do that in order for the staff to walk back in
9 that institution.

10 I don't know if I can address anything that you
11 said. I'm not sure what I can say or can't say, but anyway
12 --

13 THE COURT: You can say anything that you think I
14 need to know.

15 VICTIM JOHNSON: Well, I'm going to say, he's not
16 schizophrenic. That's -- well, that's what the floor is
17 for. He's not schizophrenic. I disagree -- I mean, I know
18 he's not. So I'll let the lawyers address. So he's not
19 schizophrenic. That's a lie. That's -- he's not
20 schizophrenic. He came to FCI Victorville as a care level
21 -- I remember he was a care level health 1, which means he
22 had no mental issues when he first got to Victorville. It's
23 a minimum security facility. He was a care level health 1.
24 Mental health care level 1, which means you have no mental
25 illness.

1 So I do remember that. So I don't know where the
2 schizophrenic came from, but apparently he can be anything
3 after you attack somebody like that to get a lighter
4 sentence, or not to end up in the super max prison. But
5 he's not schizophrenic. I would testify that all day long,
6 not because I got attacked. I know -- I know that's not
7 true.

8 But, anyway, the permanent scars that it caused
9 me. I don't have all the feelings on my left side anymore.
10 I can't play golf anymore. I can't swing a golf club. I
11 can't even -- my wife can't even hug me -- causes sensation
12 on that side -- anymore. It changed my entire life.

13 And I think it impacted the Federal Bureau of
14 Prisons because most of the wardens in the Federal Bureau of
15 Prisons when they did rounds in the housing units, or they
16 stood main line, they did it by themselves. They usually
17 didn't have an entourage to go with you when you actually
18 made rounds throughout your own institution, but I'm pretty
19 sure --

20 I can bet my whole paycheck that you can't find
21 another warden at a medium or high-security prison would
22 make rounds by themselves again after that attack happened
23 to me. Because that's the first time that ever happened
24 that I know of in the Federal Bureau history where a warden
25 was attacked that vicious like that.

1 Because when you look at somebody like him -- and,
2 you know, I know evil when I see it. You know, I work in a
3 -- in fact, I'm in a maximum prison now. I'm the warden at
4 a maximum security prison today, and I would tell you, he
5 still is the most dangerous inmate, even if he would be at
6 my prison. He's a dangerous inmate.

7 And I would tell you that -- I would testify
8 'cause it's going to happen. When he's let out of super max
9 prison, he's going to do it again. The next person won't be
10 so lucky. I was fortunate because I am a military vet, and
11 I can defend myself. He just didn't know that.

12 I am a combat vet. I can defend myself. That's
13 the only thing that saved my life was my military training
14 or I would be dead right now. That's the only thing that
15 saved my life was the training I got in the military.
16 That's why I'm standing here before you, talking today.

17 But I just can't -- I mean, I just can't
18 believe -- it really impacted my life. I did come to -- I
19 guess I've been holding it in until I heard you say what you
20 said that I just can't -- even going into restaurants, when
21 somebody come behind me -- no one can walk behind me anymore
22 because of what he did. No one can walk behind me without
23 me being fear -- I'm always on guard when somebody walk
24 behind me in a restaurant, in an institution, or even in my
25 office. I got a fear now of somebody being behind me

1 because of that attack.

2 So that's all I wanted to say. I just wanted you
3 to hear my story. And I would tell you -- I'm going to say
4 it on record because I want it on record because it's not
5 because he attacked me, it's because it's the truth, he is
6 not schizophrenic. I'm saying it on record because I want
7 it on record that he's not. You can check with the B.O.P.
8 He is not schizophrenic.

9 THE COURT: All right. Could I just ask you: How
10 old is your daughter?

11 VICTIM JOHNSON: She's 25 now.

12 THE COURT: What is she doing these days? Is she
13 in school?

14 VICTIM JOHNSON: She finished school. She works
15 -- in fact, she's going back to school to do something else.
16 She's going to be a permanent student, but -- kids that go
17 to school. She's going to be a permanent student, but she
18 lives in Long Beach with her sister, my oldest daughter, and
19 she works at Sears. And she works and goes to school, so...

20 THE COURT: All right. Thank you for coming from
21 Louisiana out here today to give me your side of the story.

22 VICTIM JOHNSON: All right. Thank you. That's
23 all I got.

24 THE COURT: Thank you.

25 Ms. Potashner.

1 MS. POTASHNER: Thank you, Your Honor. I'm not
2 here this morning to, in any way, lessen or minimize what
3 Warden Johnson went through. I recognize that this is,
4 essentially short of murder, this is a serious type of
5 offense that this Court could possibly be adjudicating. I
6 recognize that the Bureau of Prisons' security and safety is
7 of paramount concern to all involved.

8 We've stipulated to a 20-year sentence. The only
9 question for this Court in my mind is to run five of those
10 20 years concurrent to his current sentence.

11 I think it is important and I appreciate that the
12 Court has taken its time and care to read all of the
13 documentation and information that has been presented to it
14 because in the recitation of the facts about my client, it's
15 clear that the Court really understands much about his
16 background. I would like to add a little bit to that,
17 though.

18 You have a 36-year-old man in front of you today.

19 THE COURT: I'm sorry -- 36?

20 MS. POTASHNER: I believe it's 36, Your Honor.
21 1982 to present.

22 THE COURT: All right. I'm sorry. I thought he
23 was 30, but --

24 MS. POTASHNER: That's fine.

25 And when he was nine-years-old, he was living in

1 Uzbekistan and that was the fall of the Soviet Union. And
2 as the Court indicated, that was a chaotic time in that
3 region's history. It was lawless. It was scary. There was
4 an oppressive Government. His parents became religious,
5 converted during that period of time and because of their
6 conversion because of their own personal family history and
7 their own ethnicity, they were targeted within their own
8 community.

9 Mr. Kurbanov went to a school that was primarily
10 of Russian descent. Because he was Uzbeki, that made a
11 difference there and he was tormented and beaten there.
12 When he got home, there was no relief from that because,
13 perhaps -- and I'm speculating -- the stress and the
14 oppression that his parents were feeling were transferred to
15 where they had control and power which was within the home.
16 His sister indicated, and Mr. Kurbanov has described, his
17 father drinking and beating him and having him beat his
18 sister at a young age. This is a boy who was nine, ten
19 years old living in that environment.

20 When he was 17, he was walking down the street and
21 a bomb exploded within feet of him. He was blown back, hit
22 his head, lost consciousness. And when he woke up, he woke
23 up to shrapnel and blood and bodies and chaos. He was a
24 teenager at that time.

25 During that time period, not only was he

1 experiencing what was happening outside in the community,
2 outside within his family home, but he was also experiencing
3 uniqueness inside his own brain.

4 When he was 14 and 15 years old, he started to
5 experience hallucinations. He experienced visual, auditory
6 and smell hallucinations. He had the sensation of being
7 choked from outside. He believed that there was a devil
8 inside him struggling to take control of him. This was when
9 he was 14 or 15 years old.

10 And clearly what was going on in his country and
11 his community and his home was not at all equipped to deal
12 with a boy who was starting to show psychiatric problems
13 that went untreated.

14 During this time period, before the car bomb went
15 off, his parents were both arrested. His mother was taken
16 away first, then she was returned in exchange for his
17 father. His father was taken away and tortured. His nails
18 were ripped out of his skin, and he was returned a broken
19 man. That was the childhood that Mr. Kurbanov had there.

20 It didn't end for him with those experiences. In
21 2000, he was beaten outside of a stadium, beaten to the
22 point where he was unconscious and he suffered head injuries
23 there.

24 He then is brought into the army. He's serving as
25 a soldier. And part of -- again, I am not a psychiatrist or

1 psychologist, but I assume from the environment that he was
2 in, the aggression that was in the environment that was
3 translating to him, being the lowest man on the totem pole,
4 while he was in the military. So what that meant -- their
5 form of hazing was beating. He was beaten when he was in
6 the military. He was beaten with a butt of rifles. He was
7 beaten to unconsciousness. He was held against the wall by
8 his neck and his head was slammed against the wall
9 repeatedly. That was his experience in the military for his
10 country.

11 He then fled. He was a refugee in Kazakhstan, and
12 then he came to the United States. That is the history and
13 the psychology of the person who came to the United States
14 in his early 20s. Not only was he carrying his life
15 experience, the aggression, the chaos, the lawlessness, the
16 beatings. Not only was he carrying that on the outside, he
17 was carrying a complex psychological dysfunction on the
18 inside.

19 What we know from Dr. Ghannam's report is that he
20 suffers from P.T.S.D., from depression with psychiatric
21 features, with anxiety disorder, with post-concussive
22 syndrome, and he's demonstrated suicidality multiple times.
23 That's the person who came to the United States. That's the
24 person who wasn't equipped to be a fully functioning adult
25 in the United States. That was a broken person who was

1 delivered to the United States.

2 He's then in custody and fast-forwarding to the
3 days he attacked the warden, days before he's in
4 Victorville. He is not properly medicated. And with all
5 due respect, I believe he needed to be medicated and, as did
6 the doctor who evaluated, Dr. Ghannam. That he was not
7 properly medicated, that he was isolated from his family and
8 that was the state that he was in Victorville when he
9 attacked the warden.

10 Now, as I started with, I'm not here to say that
11 that attack wasn't gruesome and unwarranted and worthy of a
12 substantial punishment, because it is. My client has wanted
13 to accept responsibility for his behavior since the get-go.
14 My client, believe me, without advice of counsel, wrote to
15 the Court directly through the institution that he was
16 housed in to say: I want to plead guilty. He is ready to
17 take responsibility and has been.

18 So this -- and my explanation of his background
19 and his psychological history is not an excuse or way to
20 justify his behavior, but it is critical that this Court
21 take all of that in consideration when assessing what the
22 right punishment is here.

23 And I think what also is critical is what will
24 happen to Mr. Kurbanov when he leaves this Court to serve
25 the balance of this sentence. He's 36 years old. What we

1 know from Expert Beasey (ph), who is a 36-year veteran of
2 the Bureau of Prisons, a person who currently does risk
3 assessments for the Bureau of Prisons and also works
4 privately, clearly this person who's an expert of assessment
5 of the B.O.P. tells us that Mr. Kurbanov will spend the rest
6 of his time in custody at ADX. He will spend the next
7 70 months -- this is an estimation -- that he will spend the
8 next 70 months -- which is more than six years. He will be
9 in the control -- I believe it's the control unit of ADX.
10 There, he will spend 23 hours, every single day inside his
11 cell, alone. He will eat, sleep, shower and fully exist
12 inside that cell for 23 hours every day. He will get out
13 for one hour a day for recreational time. And what
14 recreational time means is that he'll be fully shackled,
15 he'll be put in another cage. The cage will have cement
16 around it where he cannot see forward, but he can see the
17 sky. And he will be alone in that cage for that one extra
18 hour a day.

19 And then he will be returned to his cell. He will
20 have no human contact except for screaming through the walls
21 and whatever the guards want to say to him or not say to
22 him. That will be his life for the next 70 months.

23 His life will be in the size of a space of a
24 parking space, eighty-seven square feet, where there's a
25 bed -- a bed and a stool and a desk that are affixed to the

1 ground or not movable. He will have a blanket, and he will
2 have very few personal items. His interaction with the
3 outside world will be a video monitor where he can get some
4 programming. And hopefully the B.O.P. will give him
5 whatever they can through that video monitor to address his
6 serious psychological issues.

7 After those 70 months, his life is not going to
8 change dramatically. What will happen is, instead of having
9 seven hours a week outside of that cell in another cage by
10 himself, he will have ten hours a week in that cage, three
11 additional hours. And that will be his life for the next --
12 our request would be for the next 35 years. That will be
13 his life. He will not be able to hug his family members if
14 they are ever able to make it or willing to make it to visit
15 him. He will not have human contact or interaction
16 physically. That will be his life. That is a substantial,
17 substantial punishment.

18 What we know from Craig Hainey and the article
19 that was submitted to this Court is that being in isolation
20 for more than ten days starts to have dramatic impact on a
21 human being. Human beings are not wired to be in isolation
22 for periods of time. We are social beings who need
23 interaction. Mr. Kurbanov will not have that basic need.
24 And I understand why. I understand why it is important to
25 separate him and to cage him like an animal for 35 years.

1 If this Court were to give him 15 years
2 consecutive instead of 20 years and if he were to get some
3 good time credit, which I do not know he will even get, he
4 would not be eligible for release until he's nearly 70 years
5 old.

6 And then he's not going to get released into the
7 United States of America. He will be in deportation
8 proceedings, if he survives that long. Because what else we
9 all know is that the length of -- the life expectancy for
10 somebody in custody is greatly truncated to a person who is
11 out in our community.

12 So if he has a few years after being isolated for
13 35 years, it will not be free in the United States of
14 America.

15 So that's why I ask the Court -- and I recognize
16 that the Court has the discretion to run all 20 years
17 consecutive, but I ask the Court, based on the complexity of
18 his background, the complexity of his psychological makeup
19 and the dire situation that he will be in for decades after
20 today's date, I ask the Court to take that all into
21 consideration and run five of those 20 years concurrent and
22 give him the other 15 years consecutive.

23 And, finally, I would ask the Court, when
24 Mr. Kurbanov has his opportunity to allocute and if he does
25 decide to speak to the Court, I would ask the Court to

1 consider his background, his mental health history and his
2 diagnoses and issues when the Court is evaluating the
3 statements that he may make to the Court.

4 THE COURT: Thank you.

5 Before I hear from the defendant, Ms. Yang, do you
6 wish to respond?

7 MS. YANG: Your Honor, just very briefly.

8 The Government is not unsympathetic to the
9 defendant's situation. The Government recognizes that his
10 social history, much of which is self-reported and not
11 corroborated by objective sources, is troubling and does set
12 forth childhood and background that is traumatic.

13 The Government also recognizes and is not
14 unsympathetic to his mental health issues which are now
15 being treated. Before apparently when he was out of custody
16 were not being treated. The Government just does not want
17 the Court or the parties here to lose focus as to what
18 really happened in this case and who really is going to
19 suffer. It's almost like a competition who's going to
20 suffer worse.

21 There is no competition here. The Government
22 recognizes that the defendant's conditions of confinement
23 will be incredibly restrictive. The Government would simply
24 like to note for the Court that is because of the
25 defendant's actions.

1 Prior to his attempt to kill the warden, he was in
2 the general population facility. He was free to engage with
3 other humans, other inmates, other B.O.P. staff. He lost
4 that privilege when he attempted to kill the warden. It is
5 not at all surprising that his attempt to kill the warden
6 and his ongoing threats to kill B.O.P. staff, that the
7 B.O.P. has no choice but to put him in a facility where he
8 is the most restricted. And again, this was based on the
9 defendant's own actions and choices.

10 And the person in this case who is going to suffer
11 for the rest of his life is Warden Calvin Johnson. I think
12 he explained to you the initial trauma, the initial impact
13 on his life to not just himself physically and emotionally,
14 but to his family. His mother, his daughter who thought she
15 was on the verge of losing yet another parent. His entire
16 family.

17 But what the Government also wants to stress to
18 the Court is that this also changed how Warden Johnson does
19 his job, which also changes how other inmates' lives are
20 impacted.

21 Prior to this attempt on his life, Warden Johnson
22 was the kind of warden who wanted to engage with the
23 inmates. He wanted to make their lives more livable while
24 incarcerated. He stood main line every day just so the
25 inmates could approach him and ask him questions and he

1 could help them with problems. He walked the housing units
2 on his own to let these inmates know that he's not just some
3 figurehead sitting in his office who doesn't care about
4 their lives. But that, in fact, he was very interested and
5 wanted to make sure that whatever he could do to help them,
6 he would do.

7 Because of this attack on his life, Warden Johnson
8 no longer does that. He no longer feels the freedom and the
9 safety to engage with inmates. He now walks, as he
10 mentioned to the Court, with an entourage which is something
11 he never wanted before. It makes him far less accessible to
12 the inmates. He doesn't stand main line on his own anymore.
13 He is much more closed off to the inmates, which is not the
14 way he wanted to do his job.

15 In addition, to the emotional impact it has on him
16 that will be with him for the rest of his life, the impact
17 it's had on his relations with his family members, it also
18 impacts one of the most important things that he loves to do
19 and that's his job. And the Government would just like the
20 Court to keep that in mind when fashioning the appropriate
21 sentence in this case.

22 And unless the Court has any further questions,
23 the Government would submit on its papers.

24 THE COURT: Mr. Kurbanov, you have the right to
25 speak to me at this time if there's anything that you would

1 like to say. Now is your opportunity.

2 THE DEFENDANT: Yes, I would like to say a few
3 words.

4 Thank you, Your Honor. Thank you that you heard
5 my case today. And I want to thank my lawyer for help that
6 she provided to me. Everything you heard just now about my
7 story and about my health, it is all true, but I want to
8 talk today about other things.

9 When I arrived to the United States as a refugee,
10 I really loved this country. I had family, I had work, I
11 had almost everything. But as you can understand, I had
12 really big problems with Russia and with Russian Government,
13 and I really do not like Russia.

14 So everything in my life was great until I was
15 arrested for this material help to terrorist as they called
16 it. That changed my life drastically. I lost everything.
17 My work, my family, my freedom. And I was not guilty
18 completely in what they claimed I did. They made a
19 terrorist out of me. It was not true and that made me very
20 angry.

21 And after that, I start study, in particular, I
22 start study: What is United States? What is Americans as
23 people? And after I did my research, I got disappointed and
24 disillusioned in the United States, and I did not believe
25 this country anymore.

1 And, of course, my second offense, I'm completely
2 guilty in it. I admit my guilt. But I am not sorry about
3 it. Because United States and Russia, they are in war with
4 my country, and they are killing my brothers and sisters.
5 So what I tried to do, it wasn't just attempt to kill
6 somebody. He was supposed to die because he represented
7 this state, which destroyed my family and my life and which
8 keep killing my brothers and sisters in Iraq and Syria.

9 I did love this country in the past, but I don't
10 believe it anymore. Because so many of them are unjust.
11 They killing other people, and they are Godless. So today I
12 can say that I trust today only one state, which is Islam
13 state. And I can just say: Long live Islam state and death
14 to the rest. Those who are not following Islam. That's it.
15 Thank you.

16 THE COURT: All right. Is there any legal cause
17 why sentence should not now be imposed?

18 MS. POTASHNER: No, Your Honor.

19 MS. YANG: No, Your Honor.

20 THE COURT: I originally stated my intended
21 sentence was a sentence of 20 years to run consecutively to
22 the term being served in case number 13-120 in the District
23 of Idaho, and I intend to abide by that and impose that
24 sentence.

25 It's always been my -- in the 19 years or so that

1 I've served as a district judge, it's always been my
2 philosophy that a defendant has the right to allocute and,
3 therefore, I would not or should not impose a sentence
4 longer than my intended sentence based on what a defendant
5 said in his allocution. My intended sentence before I heard
6 the defendant speak, of course, was the statutory maximum,
7 so the policy wasn't really tested today as a practical
8 matter.

9 But this is a very difficult case because of the
10 horrible nature of the attack, the affect that it had on
11 Warden Johnson not only physically, but in terms of his
12 family and in terms of the change that it has made in his
13 ability to do his job.

14 The defendant -- Mr. Kurbanov, every time I read a
15 presentence report with the details of a terrible series of
16 life experiences and a terrible childhood, I think: Well,
17 that's the worst one I'll ever have to read. Mr. Kurbanov's
18 life before he came to the United States was truly one of
19 the worst I have ever read from a very young age. And the
20 series of mistreatment -- and that's really not a strong
21 enough word, but the series of experiences he had from a
22 young age until he immigrated are really hair-raising.

23 But, sadly, the combination of those experiences
24 have led him to a point where he's truly a danger to
25 everyone around him. And what he said in his allocution

1 confirms that. Defense counsel is correct. He accepted
2 responsibility for this offense early, wrote to the Court,
3 came into the court and explained that he wanted to enter a
4 plea of guilty and did so, but it's clear that despite how
5 difficult his life will be in prison, as defense counsel
6 eloquently explained, it's really hard to conceive of a way
7 that would ensure the safety of others, other than for the
8 defendant to be housed in isolation.

9 So my hope is only that he receives whatever
10 treatment might assist him in coping with his many years of
11 isolation ahead so that when he is released, he can be
12 around others without putting his current intentions into
13 practice.

14 So I have considered the sentencing factors set
15 out at 18, United States Code Section 3553(a), as well as
16 the advisory sentencing guidelines and impose sentence as
17 follows: It's ordered that the defendant shall pay to the
18 United States a special assessment of \$100 due immediately.

19 Any unpaid balance shall be due during the period
20 of imprisonment at the rate of not less than \$25 per quarter
21 pursuant to the B.O.P.'s Inmate Financial Responsibility
22 Program.

23 Pursuant to sentencing guideline section 5e1.2a,
24 all fines are waived as the Court finds that the defendant
25 does not have the ability to pay a fine.

1 Pursuant to the Sentencing Reform Act of 1984,
2 it's the judgment of the Court that the Defendant,
3 Fazliddin Kurbanov, is hereby committed on Count 1 of the
4 indictment to the custody of the Bureau of Prisons for a
5 term of 240 months to run consecutively to any undischarged
6 term of imprisonment imposed in United States v. Kurbanov,
7 case number 13-120-EJL in the District of Idaho.

8 The Court recommends that the Bureau of Prisons
9 conduct a mental health evaluation of the defendant and
10 provide all necessary treatment.

11 Upon release from imprisonment, he shall be placed
12 on supervised release for a term -- what's the term in the
13 case in the District of Idaho of supervised release? Is it
14 a lifetime term?

15 MS. YANG: Your Honor, it is, I believe -- I have
16 the J and C -- I'm sorry, Your Honor. One moment.

17 THE COURT: Go ahead.

18 MS. YANG: It is a three-year term concurrent on
19 all counts.

20 THE COURT: Then I would impose a term of
21 supervised release of life to run concurrently with a term
22 in Idaho under the following terms and conditions:

23 He shall comply with the rules and regulations of
24 the U.S. Probation Office and General Order 05-02, with the
25 exception of Conditions 5, 6, and 14 of that order.

1 The defendant shall not commit any violation of
2 local, state or federal law or ordinance.

3 As directed by probation, he shall notify specific
4 persons and organizations of specific risks and shall permit
5 the probation officer to confirm his compliance with such
6 requirement and to make such notifications.

7 He shall refrain from any unlawful use of a
8 controlled substance. He shall submit to one drug test
9 within 15 days of release from custody and at least two
10 periodic drug tests thereafter, not to exceed eight tests
11 per month as directed by probation.

12 He shall participate in mental health treatment
13 which may include evaluation and counseling until discharged
14 from the treatment by the treatment provider with the
15 approval of the probation officer.

16 As directed by the probation officer, he shall pay
17 all or part of the costs of the court-ordered treatment to
18 the aftercare contractors during the period of supervision
19 and provide payment and proof of payment as directed by
20 probation.

21 If the defendant does not have the ability to pay,
22 no payment shall be required.

23 The Court also recommends that the Bureau of
24 Prisons provide the defendant with at least a 90-day supply
25 of medication upon his release from custody.

1 During the period of supervision, he shall pay the
2 special assessment in accordance with this judgment's orders
3 regarding such payment.

4 He shall comply with the immigration rules and
5 regulations of the United States and if deported from this
6 country, either voluntary or involuntarily, not re-enter the
7 United States illegally.

8 He is not required to report to the probation
9 office while living outside of the U.S., but within 72 hours
10 of release from any custody or any re-entry to the United
11 States during the period of supervision, he's to report for
12 instructions to the U.S. Probation Office located at the
13 United States Courthouse -- I think actually it's -- they're
14 no longer at 312 Spring Street, I believe.

15 THE CLERK: No, Your Honor, they are not.

16 THE COURT: I think they are in the Roybal
17 Building. So that would be 255 Temple Street in
18 Los Angeles, California.

19 The defendant shall cooperate in the collection of
20 a DNA sample from the defendant.

21 Does the Government have a motion?

22 MS. YANG: Yes, Your Honor. The Government moves
23 to dismiss Counts 2 and 3 of the indictment in the interest
24 of justice.

25 THE COURT: Thank you.

1 Again, the Court thanks Warden Johnson for
2 appearing here today, and I wish you the best in the future
3 and your family also.

4 Mr. Kurbanov, you have the right to appeal. Let
5 me start over again. You entered a plea of guilty in this
6 case, and by doing so you gave up many of your rights to
7 appeal. To the extent that you still have any right to
8 appeal the Court's decision as to your sentence, you may do
9 so by filing a Notice of Appeal with the Clerk of Court.

10 You may request that you be allowed to file any
11 notice of appeal without paying the fee that's usually
12 required. You have 14 days to file any Notice of Appeal or
13 you lose your right to appeal altogether. Do you
14 understand?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Thank you.

17 MS. YANG: Your Honor, just for the record, for
18 defendant's sake, in his plea agreement at paragraph 17 and
19 18, those set forth the parameters of his right to appeal.

20 THE COURT: That's correct. All right. Thank
21 you.

22 MS. POTASHNER: Thank you, Your Honor.

23 MS. YANG: Thank you, Your Honor.

24 *(Thereupon, proceedings adjourned.)*
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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript format is in conformance with the regulations of the Judicial Conference of the United States.

Date: August 17, 2018

Lisa M. Gonzalez

**/s/_____
Lisa M. Gonzalez, U.S. Court Reporter
CSR No. 5920**